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**IN THE
COURT OF APPEALS OF INDIANA**

ELDRED KING,)	
)	
Appellant-Plaintiff,)	
)	
vs.)	No. 18A05-0603-CV-120
)	
ESTATE OF JEFFREY JOHNSTON,)	
)	
Appellee-Defendant.)	

APPEAL FROM THE DELAWARE CIRCUIT COURT NO. 1
The Honorable Marianne L. Voorhees, Judge
Cause No. 18C01-0409-PL-0057

February 1, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Eldred King, challenges the trial court’s judgment denying his claim against the Estate of Jeffrey Johnston (“the Estate”) for services rendered to Jeffrey Johnston during his life and for services rendered to the Estate following Johnston’s death. Upon appeal, King presents two issues for our review, which we consolidate and restate as, whether the trial court’s judgment is clearly erroneous.

We affirm.

The record reveals the following facts.¹ Eldred King owns a licensed shooting preserve known as King Farms. As his business, King breeds, whelps, raises, trains, and boards hunting dogs. He also boards and trains other livestock and raises and sells game birds to train the dogs and horses. King typically receives compensation for these services and makes his living from this business.

King and the decedent, Jeffrey Johnston (“Jeffrey”), were not related, but were “pretty close” and “good standing friends.” Transcript at 14, 23. During Jeffrey’s lifetime, Jeffrey boarded hunting dogs at King Farms, and King bred, whelped, raised, and trained Jeffrey’s dogs. Jeffrey also boarded a horse at King Farms. Several witnesses testified that they frequented King Farms and that Jeffrey was nearly always there with King, working Jeffrey’s dogs on a regular basis. There was testimony during

¹ We note that King has failed to file an Appendix. See Ind. Appellate Rule 49(A) (requiring appellant to file appendix with appellant’s brief); Ind. Appellate Rule 50(A) (listing requirements for contents of appellant’s appendix). The record before us includes only a transcript of the bench trial and a poorly retyped copy of the trial court’s findings and conclusions found in the statement of the case section of King’s brief. This has made consideration of the present case more difficult than it need have been.

Further, in his statement of facts, King does not provide a narrative of the facts of the case. See Ind. Appellate Rule 46(A)(6). Rather, King states that he accepts the findings of fact made by the trial court in its judgment, subject to a few “corrections and/or clarifications” which King believes are pertinent to the issue upon appeal.

the bench trial which indicated that King and Jeffrey owned personal property together, specifically, a golf cart and a “pug” ATV,² and that Jeffrey kept other items of personal property, such as a car and a tractor trailer, at King Farms. King would use the golf cart and the ATV in providing training services to other clients.

Jared Elliott, one of King’s customers who often helped King out, testified that when he supplied Jeffrey with birds for training purposes, Jeffrey would not pay for the birds but instead tell Elliott that he would “just settle up with [King] later.” Transcript at 18. Elliott never thought anything of it, as he knew King and Jeffrey had a good relationship. Additionally, several of King’s customers testified that they had never seen Jeffrey pay for services provided by King. With one exception, customers other than Jeffrey typically paid King for his services at or near the time he performed them.³ When the services involved boarding, customers paid King on a monthly or bi-monthly basis or paid in full when they picked up their dog. According to King, the longest he could remember a customer not paying was six to nine months. King acknowledged that he never prepared a bill for Jeffrey until after Jeffrey’s death, despite the fact that he had been providing services to Jeffrey over a period of several years.

Following Jeffrey’s death in July 2003, King sent someone to Michigan to pick up one of Jeffrey’s dogs and Jeffrey’s horse and return them to his facility. Also, just prior to Jeffrey’s death and shortly thereafter, litters of puppies were born to two of Jeffrey’s dogs. On September 2, 2003, Timothy Johnston (“Timothy”), Jeffrey’s son, filed a

² The “pug” was described as a six-wheel vehicle.

³ King has a customer base of nearly 600 customers, of which he estimated 300 were active customers.

petition to probate Jeffrey's will, and the court appointed him as the personal representative of the Estate. A few months after Jeffrey's death, King spoke with Timothy and explained to him that he wanted to market the puppies and move them out of his boarding facility. During the meeting with Timothy, Timothy expressed that he had no need for the puppies.

On November 12, 2003, King filed a quantum meruit claim against the Estate for services rendered to Jeffrey during his lifetime which Timothy, as the personal representative, disallowed. On December 3, 2003, King filed a notice of intention to hold lien, listing the horse and the dogs in his possession which had belonged to Jeffrey, as well as other items of personal property including the ATV, a flatbed trailer, a golf cart, a farm tractor, and an automobile as security. The puppies, save two which King sold,⁴ remained at King's boarding facilities until August of 2005, when Timothy made arrangements to have the dogs picked up. At that time, eleven of Jeffrey's dogs were taken from King's boarding facilities. King, however, refused to allow the remaining dogs to be taken.

On November 23, 2005, the trial court held a bench trial on the matter of King's quantum meruit claim against the Estate for services rendered to Jeffrey during his lifetime. Near the conclusion of the bench trial, King sought to amend his claim against the Estate by adding a claim for services rendered on behalf of the Estate since Jeffrey's death, which the court ultimately permitted. On January 11, 2006, the trial court entered

⁴ King testified that one of the puppies was sold for \$1,500 and the other for \$1,000. King explained that he applied the money received from the sale of the puppies to the outstanding claim against the Estate.

a judgment, including findings of fact and conclusions of law, against King and in favor of the Estate upon King's claim for services rendered before and after Jeffrey's death. King now appeals.

Upon request of the Estate, the trial court entered special findings of fact and conclusions. In such cases, our review is two-tiered:

“[W]e determine whether the evidence supports the trial court's findings, and we determine whether the findings support the judgment. We will not disturb the trial court's findings or judgment unless they are clearly erroneous. Findings of fact are clearly erroneous when the record lacks any reasonable inference from the evidence to support them, and the trial court's judgment is clearly erroneous if it is unsupported by the findings and the conclusions which rely upon those findings. In determining whether the findings or judgment are clearly erroneous, we consider only the evidence favorable to the judgment and all reasonable inferences to be drawn therefrom.” Infinity Prods., Inc. v. Quandt, 810 N.E.2d 1028, 1031 (Ind. 2004).

Upon appeal, King maintains that he has proved his claim by way of the presumption stated in Estate of Hann v. Hann, 614 N.E.2d 973, 979 (Ind. Ct. App. 1993) that “[w]here one accepts valuable services from another the law implies a promise to pay for them.” King argues that there was no evidence in the record which rebutted this presumption.⁵ King further argues that the trial court erred in requiring him to prove

⁵ King asserts that in deciding whether the presumption of a promise to pay is effectively rebutted, courts look to the characteristics defining the nature of the relationship, such as familial relationships or household living arrangements, and the mutual benefits received by the parties. Such considerations, however, are not looked upon as rebutting the presumption of an agreement to pay, but rather as evidence establishing the presumption that services rendered by family members or in the family context are performed gratuitously. See Hann, 614 N.E.2d at 979-80. The Hann court considered such factors in concluding that Hann had not rebutted the presumption that the services for which he sought recovery under quantum meruit were performed gratuitously. Id. at 980.

something more than the simple fact that Jeffrey accepted valuable services from him. King misconstrues his burden.

To establish his quantum meruit claim against the Estate, King was required to show that he had an expectation of payment for the services rendered to Jeffrey during his life. See Grose v. Bow Lanes, Inc., 661 N.E.2d 1220, 1225 (Ind. Ct. App. 1996) (“Any benefits, commonly the subject of pecuniary compensation, which one, *not intending it as a gift*, confers upon another, who accepts it, is an adequate foundation for a legally implied or created promise to render back its value.” (emphasis supplied)); Biggerstaff v. Vanderburgh Humane Soc., Inc. 453 N.E.2d 363, 364 (Ind. Ct. App. 1983) (noting that relief under the theory of quantum meruit will be denied if the benefit was “officially or gratuitously conferred”).

Here, regardless of whether or not King presented evidence which supported a presumption of Jeffrey’s promise to pay, the trial court concluded that King failed to establish his expectation that Jeffrey pay for the services rendered. In coming to such conclusion, the court cited the following facts: that out of King’s customer base of nearly 600 customers, only one client (excluding Jeffrey) had never paid him and the longest he let any other client not pay was nine months; that King had never charged Jeffrey over a several-year period as evidenced, in part, by the fact that King had never prepared a statement of services rendered to Jeffrey until after Jeffrey’s death and by the fact that no one had ever seen money change hands between King and Jeffrey; that testimony revealed that King and Jeffrey were close friends who often worked their dogs and went on trips together; and that King and Jeffrey jointly owned personal property which King

used in the operation of his business. The trial court also cited the fact that King waited several months to file a claim against the Estate as further evidence that King did not expect payment from Jeffrey for services rendered to Jeffrey during his life until sometime after Jeffrey died. Notwithstanding evidence which King claims supports a finding that he expected payment, from the evidence cited by the trial court, a reasonable inference can be drawn that King did not expect payment for the services rendered to his friend Jeffrey. We therefore cannot say that the trial court's judgment with respect to King's quantum meruit claim against the Estate for services rendered to Jeffrey during his life is clearly erroneous. See Silverthorne v. King, 179 Ind.App. 310, 315, 385 N.E.2d 473, 476-77 (1979) (holding that no expectation of payment was shown and thus a neighbor could not recover for services performed where he made no demand for payment or intimated to anyone that he anticipated compensation for a period of several years).

We now turn to King's claim against the Estate for services rendered after Jeffrey's death. King asserts that the personal representative had an obligation to maintain and protect the Estate's property and that the personal representative did nothing until two years after Jeffrey's death to relieve King from what he perceived to be a financial obligation imposed upon him to preserve the Estate's property, i.e. by way of services provided for Jeffrey's dogs and horse. King therefore claims that the Estate has been unjustly enriched to the extent of the value of King's services in protecting and preserving the Estate's assets, i.e. Jeffrey's dogs and horse.

The trial court considered the fact that King filed a notice of intention to hold a lien, listing Jeffrey's horse and dogs as security, and the fact that when Timothy attempted to pick up the animals nearly two years later,⁶ King refused to turn them all over, as evidence that King was voluntarily keeping the dogs as security for the claims he was making against the Estate for services rendered to Jeffrey during his lifetime.⁷ From this and other evidence in the record, the trial court could reasonably have inferred that King did not expect payment for services rendered following Jeffrey's death. We therefore conclude that the trial court's judgment in favor of the Estate is not clearly erroneous.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.

⁶ The record does not inform us as to the reason for the two-year delay. At a meeting between King and Timothy a few months after Jeffrey's death, Timothy informed King that he had no interest or use for Jeffrey's dogs. King testified that he had no further contact with Timothy concerning Jeffrey's dogs. King then filed the notice of intention to hold a lien, listing Jeffrey's horse and dogs as security.

⁷ When King filed the lien and refused Timothy's attempt to pick up all of Jeffrey's dogs, he had not filed a claim against the Estate for services rendered since Jeffrey's death. Indeed, King did not seek to amend his claim against the Estate to add a claim for such services until near the end of the bench trial.